Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1248

ANTHONY B. CATALDO,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF ON APPLICATION FOR WRIT OF CERTIORARI

ANTHONY B. CATALDO
Attorney for petitioner
pro se
Office & P.O. Address
111 Broadway
New York, N.Y. 10006
(212) 962-0965

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SUPREME COURT OF THE UNITED STATES OF AMERICA

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ANTHONY B. CATALDO,

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QUESTION

Has the Solicitor General met the Constitutional questions raised by petitioner?

POINT I

THE OPPOSITION NOT ONLY HAS NOT MET THE ISSUES RAISED BY THE PETITION BUT HIS CLAIM FOR THE DECISIONS OF THE CIRCUIT COURT OF APPEALS CONSTITUTING A SECOND FINDING OF CONTEMPT ONLY CONTINUES THE UNLAWFUL ACTION OF GOVERNMENT OFFICIALS TO INVADE THE CONSTITUTIONALLY SECURED RIGHTS OF PETITIONER.

When a court's actions violate constitutionally secured rights of a litigant, it is no answer to the litigant complaining

about such action to say that the action of the court has put the question to rest. Hovey v. Elliott, 167 U.S. 409. But no citation to authority is really needed for this idea. Logic alone tells us that the answer of "regularity" is inapplicable to a claim that the decision is violative of constitutional rights. Hovey, supra, says that such action is void.

For example, the Court of Appeals said in dismissing the appeal from the contempt citation (appendix F, p. 54) that they "had heard arguments on the merits of the contempt and can find no sufficient reason for disturbing the judgment of the district court". In deciding the motion to reargue, they agreed that they could not decide the merits of a judgment on the basis of the oral arguments on the appeal when the claims to facts were disputed.

Yet, the decision of the Court of Appeals denying re-argument (appendix G,

p. 57); not only recognizes the error in their decision dismissing the appeal which speaks of the merits of the contempt citation, but then it makes another error by changing the support for their alleged finding on the merits, to saying they "could and did take judicial notice" of a certain appendix.

On the motion to reargue, petitioner had called the court's attention to the fact that the trial transcript had been misplaced by the Clerk of the District Court. It was never a part of the record on the appeal, but petitioner's copy was available to support petitioner's claim that there were no occurrences at the trial that would support the contempt citation.

Instead of accepting petitioner's offer, the Court of Appeals persisting in ignoring the facts and in denying re-argument, it said the court "could and did take judicial notice of the appendix" in

the civil appeal which though incomplete was sufficient. If there was nothing to support the contempt citation in the trial transcript, there could not be anything to support the citation in the appendix. In fact, the appendix was prepared to show the errors of the court in dismissing the complaint for the recovery of money unlawfully collected upon an arbitrary assessment. The whole of the proceedings at the trial would have to be searched to understand whether the citation was supportable by the occurrences at the trial.

The citation speaks of "repeated refusals to obey the direction of the court". It was petitioner's claim that none such "repeated refusals" had occurred. On the argument, the Assistant Attorney-General had claimed that "shouting" had occurred. The same assistant had not claimed that "repeated refusals" had occurred. Nevertheless, petitioner claimed in support of

the fact that no such repeated refusals had occurred, that he had obeyed the court.

The sum result of the action of the Court of Appeals was to correct one error by making another error, the last being to deprive petitioner of due process for the court referred to an incomplete record instead of establishing the "issue", beforehand, as in "specifications", stating the nature of the charges allegedly supporting the citation and giving petitioner a fair opportunity to meet them.

While the Court of Appeals did not come right out and say that Judge Levett's action in holding petitioner for contempt was unlawful and the citation did not violate the constitutional guide-lines laid down in the many cases of this court that had been cited, its double negative referrence to its sufficiency leaves no doubt of its ambiguous meaning and purposes. The Solicitor General is claiming here that that action o

the Court of Appeals is a second decision of a lawful finding of contempt. Yet, it could be that the court did not make a second finding of contempt. This is proof of injury to plaintiff at the hands of the government, including the Court of Appeals.

Starting with its first decision, Appendix B, p. 47, and going through Appendix G. p. 57, the Court of Appeals refused to consider the merits and the unlawfulness of the entry of the order but found excuses for not considering the merits, then it wound up saying that the citation "could not be disturbed" by erroneous standards.

It even refused to follow Rule 4(b) of the Rules of Appellate Procedures established by this court. The notice of appeal from the order of May 18, 1973 was filed in the Clerk's office on April 18, 1975, one day after the Court of Appeals' refusal to examine the merits of the order of contempt, of May 18, 1973, on the appeal

from Judge Levett's order of October 16, 1974 denying appellant's motion to vacate the order of contempt because of his error calling it a civil contempt, whereas, the Court of Appeals had called it a criminal contempt. On April 18, 1975, the order of contempt of May 18, 1973 had not yet been entered in the criminal docket. As Rule 4(b) extablishes the date of entry of a criminal judgment in the criminal docket as starting the time to appeal running, the time to appeal from the May 18, 1973 order had not yet started to run when the notice of appeal from it had been filed on April 18, 1975. Hence, under the plain terms of Rule 4(b), the notice of appeal from the contempt order was timely filed. Yet, the Court of Appeals said of Rule 4(b), "But whatever the intent of that provision in the usual case * * * it is not meant to extend the time for appeal indefinitely * * *". This holding is directly contra-

dictory of Rule 4(b). Appellant had the right to rely on a Rule established by this honorable court as it is written. The finding of exceptions by the Court of Appeals is a denial not only of due process, but, also, of the equal protection of the laws clause of the Constitution.

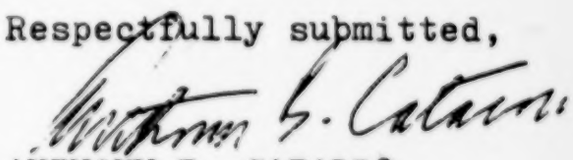
It is obvious that the Court of Appeals acted arbitrarily to deny appellant a review of the order of contempt on the merits and that its decision purporting to have examined the merits were meant to avoid an examination of the merits in violation of appellant's plain right to be free of a criminal conviction.

None of the cases cited by the Solicitor General support any opposition to this writ. Another act which spreads the creditability gap plaguing government action nowadays, is the fact that the memorandum of the Solicitor-General was only received on April 26, 1976. This court

is urged to speak out on the conduct of government officials exhorting them to abide by their official regulations specifying their Rules of Conduct. Our country needs this protection from this court. "What you do unto the lowliest of them, you do unto me," said Jesus.

It is respectfully prayed that the writ be granted.

Respectfully submitted,



ANTHONY B. CATALDO
Attorney, pro se, for petitioner